

## **REMARKS**

### **Rejections**

#### ***Rejections under 35 U.S.C. § 101***

##### **Claims 23-35**

Claims 23-35 stand rejected under 35 U.S.C. § 101 as being drawn to non-statutory subject matter. Applicant has amended the claims to recite a computer-readable storage medium in light of *In re Nuijten*, in which the Federal Circuit held that a computer-readable storage medium does not encompass signals. Applicant respectfully submits that the amendment is supported in paragraph 26, which describes a memory storing instructions, because a memory is a well-known computer-readable storage medium.

Accordingly, Applicant respectfully submits that the invention as claimed in claims 23-35 is statutory subject matter and respectfully request the withdrawal of the rejection of the claims under 35 U.S.C. § 101.

#### ***Rejections under 35 U.S.C. § 102(e)***

##### **Claims 1, 2, 9, 10, 23, 24, 31, 32 and 45**

Claims 1, 2, 9, 10, 23, 24, 31, 32 and 45 stand rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent 7,233,953 to Heuer et al. Applicant respectfully submits that Heuer is not prior art under § 102.

The Examiner asserts that Heuer is entitled to the December 22, 2000 filing date of the counterpart German patent for § 102(e) purposes. This is incorrect. Heuer's § 102(e) filing date is the PCT filing date of December 20, 2001. Applicant directs the Examiner's attention to MPEP 706.02(f)(1), which states that the § 102(e) filing date for a U.S. patent resulting from a PCT application is the PCT filing date. In particular, Applicant directs the Examiner's attention to the footnote in the flowcharts of 706.02(f)(1), which clearly states "Do NOT consider foreign priority claims" [emphasis in the original].

Applicant claims the benefit of provisional applications filed March 1, 2001 and July 11, 2001. Since Heuer's §102(e) filing date is December 20, 2001 and thus, after Applicant's effective filing date, Heuer is not prior art to Applicant's application.

Accordingly, Applicant respectfully requests the withdrawal of the rejection of the claims under 35 U.S.C. § 102(e).

***Rejections under 35 U.S.C. § 103***

**Claims 3-8, 25-30 and 46-49**

Claims 3-8, 25-30 and 46-49 stand rejected under 35 U.S.C. § 103(a) as being obvious over Heuer in view of U.S. Patent 7,143,190 to Christensen. Heuer is not prior art to Applicant's application. In addition, Applicant respectfully submits that Christensen also is not prior art to Applicant's application.

Christensen's effective filing date is April 2, 2001. Applicant's earliest claimed priority date is March 1, 2001. Because Christensen's effective filing date is after Applicant's effective filing date, Christensen is not prior art to Applicant's application.

Furthermore, even if Applicant's earliest priority date is discounted and Christensen can be considered prior art, claims 3-8, 25-30 and 46-49 depend from one of independent claims 1, 23 or 45. Because Heuer is not prior art, Christensen must disclose the elements of the independent claims, as well as those of the dependent claims, to have a proper *prima facie* case of obviousness. However, Christensen is directed toward integration of diverse systems through the Internet and does not disclose the elements of the independent claims. Therefore, Christensen alone cannot be properly interpreted as rendering obvious Applicant's invention as claimed in claims 3-8, 25-30 and 46-49.

Accordingly, Applicant respectfully requests the withdrawal of the rejection of claims 3-8, 25-30 and 46-49 under 35 U.S.C. § 103(a).

**Claims 11-13 and 33-35**

Claims 11-13 and 33-35 stand rejected under 35 U.S.C. § 103(a) as being obvious over Heuer in view of U.S. Patent 7,269,744 to Shipley et al. Heuer is not prior art to Applicant's application.

Claims 11-13 and 33-35 depend from one of independent claims 1 or 23. Because Heuer is not prior art, Shipley must disclose the elements of the independent claims as well as those of the dependent claims to have a proper *prima facie* case of obviousness.

However, Shipley is directed toward the encryption of data streams and does not disclose the elements of the independent claims. Therefore, Shipley alone cannot be properly interpreted as rendering obvious Applicant's invention as claimed in claims 11-13 and 33-35.

Accordingly, Applicant respectfully requests the withdrawal of the rejection of claims 11-13 and 33-35 under 35 U.S.C. § 103(a).

### **SUMMARY**

Claims 1-13, 23-35 and 45-49 are currently pending. In view of the foregoing amendments and remarks, Applicant respectfully submits that the pending claims are in condition for allowance. Applicant respectfully requests reconsideration of the application and allowance of the pending claims.

If the Examiner determines the prompt allowance of these claims could be facilitated by a telephone conference, the Examiner is invited to contact Sue Holloway at (408) 720-8300 x3476.

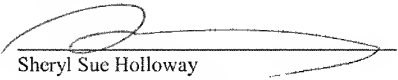
### **Deposit Account Authorization**

Authorization is hereby given to charge our Deposit Account No. 02-2666 for any charges that may be due. Furthermore, if an extension is required, then Applicant hereby requests such extension.

Respectfully submitted,

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